



January 17, 2013

Shawn Musgrave
MuckRock News
DEPT MR 2492
PO Box 55819
Boston, MA 02205-5819

Re: Right-to-Know Law Request No. 3-13

Dear Mr. Musgrave:

On January 14, 2013, the open-records officer of the Department of Military and Veterans Affairs (DMVA) received your written request for information. DMVA is responding to your request under the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, *et seq.* (RTKL). You asked:

“To Whom It May Concern:

Pursuant to Pennsylvania Right to Know Act, I hereby request the following records:

1. any requests for proposals, proposals submitted by vendors, contracts, budgets or cost allocations for the purchase, research of and/or use of aerial drones, UAs, UAVs, and UASs (hereinafter “drones”);
2. any policies, guidelines, manuals and/or instructions on institutional use of drones, including on the legal process required (such as a warrant or court order), if any, before operating a drone;
3. any departmental records concerning this institution's use of and/or research of drones now or plans to use drones in the future including:
 - a. the types of investigations or instances in which this department is using or plans to use drones, or how it plans to support, manage or oversee the usage of drones by another department or office;
 - b. policies, guidelines, manuals and/or instructions on storage requirements or procedures for video or static images obtained through use of drones, including retention times;
 - c. the altitude at which drones can or do fly;
 - d. drones' ability to carry weapons.

The Department does not have the records that you request in its possession, under its custody or its control. All “drones” assigned to the Pennsylvania National Guard are owned by the United States Government and operated under the authority of Titles 10 & 32, United States Code. The Department of Military and Veterans Affairs does not own or operate any drones under its state missions. These systems are not Commonwealth property and are not the subject of state public records.

Records related to the federally-procured equipment allocated to the National Guard are federal records of the United States Government. If you wish to pursue a request for federal records, if any, you should direct your request to the Freedom of Information Act Officer as follows:

DCISM/J6
ATTN: Freedom of Information Act Officer
Building 11-74
Fort Indiantown Gap
Annville, PA 17003-5002
NGPA.FOIA@ng.army.mil

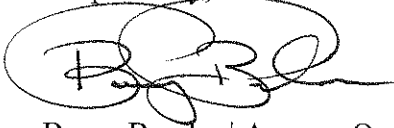
Pursuant to the Office of Open Records Final Decision in *Jenkins vs. Pennsylvania Department of State*, OOR Dkt. AP 2009-065, it should be noted that: "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (*see, e.g.* section 67.506 (d)(1))." Further, an agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705.

You have a right to appeal this response in writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the record exists under the custody or control of the agency.

Also, the OOR has an appeal form available on the OOR website at:
<https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>.

Respectfully,



Bryan Bender | Agency Open Records Officer
PA Department of Military and Veterans Affairs | Office of Administration
Building 0-47, Fort Indiantown Gap | Annville, PA 17003
Phone: 717.861.8850 | Fax: 717.861.6200